CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 399

January 19, 1977

RESERVATION INDIANS NOT TAXABLE ON INCOME DERIVED FROM RESERVATION SOURCES

Syllabus:

Advice has been requested as to the extent native Americans (Indians) are subject to taxes imposed by the California personal income tax law.

On June 14, 1976, the United States Supreme Court in Bryan v. Itasca County, _____ U.S._____, 44 Law Week 4832, held that Public Law 280 (28 USC 1360), which extends state civil laws to reservations, does not include state tax laws. Accordingly, the court concluded that Congress has not conferred to the states taxing jurisdiction as to Indians residing on reservations, and that, in the absence of such congressional consent, federal laws preempt state laws. The Supreme Court affirmed its earlier holding in McClanahan v. Arizona State Tax Comm., 411 U.S. 164, with respect to the taxation of reservation Indians, but concluded that the holding was applicable even though a state had not ceded jurisdiction to Indian reservation lands.

Personal Income Tax Regulation 17071(p) provides that income derived from allotted and restricted Indian land held by the United States as Trustee under Section 5 of the General Allotment Act of 1887 is exempt from taxation. Such exempt income includes rentals, royalties, proceeds of sale of cattle raised on or of crops grown upon the land and income from the use of the land for grazing purposes. In view of Bryan decision, supra, income received by reservation Indians from reservation sources is exempt in addition to the income described by Reg. 17071(p).

The exemption of income with respect to reservation Indians does not apply to income earned outside the reservation. The basis for the exemption is that federal laws preempt state laws as to tribal Indians with respect to income earned on the reservation. Therefore, the preemption is not applicable to tribal Indians who have left or never inhabited federally established reservations, or Indians "who do not possess the usual accouterments of tribal self-government." Accordingly, Indians living, working or deriving income outside their reservations are subject to the normal state income tax laws.

There is some uncertainty as to the individuals recognized as Indians, and their income tax status if they reside on a reservation of which they are not a member. In Mary Jo Fox v. Bureau of Revenue, 87 N.W. 261, cert. den. 88 N.M. 318 (1975), the court concluded that tribal affiliation was of no importance so

long as there was a coalescence of status of the two facts -- status as a reservation Indian and situs on a reservation. Also in John C. Moe et al v. The Confederated Salish and Kootenai Tribes of the Flathead Reservation, et al., 96 S. Ct. 1634 (1976), the Supreme Court noted that the District Court in concluding a state cigarette tax could not be imposed on sales made on the reservation to Indians extended its holding to exempt sales of cigarettes to Indians living on the reservation irrespective of their membership in the plaintiff tribe.

In view of the above it is concluded that the reservation source state income tax exemption will be allowed to any reservation Indian residing on a reservation. According to the Bureau of Indian Affairs, reservation status can be determined by their records and/or tribal records.